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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 PERSHING PACIFIC WEST, LLC, a  
11 Delaware limited liability company

12 Plaintiff,

13 v.

14 MARINEMAX, INC., a Delaware  
15 corporation; MTU DETROIT DIESEL,  
16 INC. D/b/a DETROIT DIESEL  
17 CORPORATION, a Delaware  
18 corporation; MTU Friedrichshafen  
19 GmbH, a Foreign corporation;  
20 FERRETTI GROUP, USA, INC., a  
21 Florida corporation and DOES 1 through  
22 30,

23 Defendants.

Civil No. 10cv1345-L (DHB)

**ORDER REGARDING JOINT  
MOTION FOR PROTECTIVE  
ORDER**

**[ECF No. 116]**

24 On April 10, 2013, Plaintiff and Defendant MTU Friedrichshafen GmbH  
25 (“MTUFN”), filed a joint Motion for Protective Order. (ECF No. 116.) On April 11,  
26 2013, Plaintiff filed an Objection to MTUFN’s submissions regarding the joint motion.  
27 (ECF No. 117.) Upon reviewing the joint motion, it appears MTUFN is seeking  
28 reconsideration of the Court’s March 11, 2013 Discovery Order. (ECF No. 104.) The  
Court has considered the joint motion and supporting exhibits, the proposed Protective  
Order, and Plaintiff’s objections thereto. To the extent MTUFN seeks reconsideration  
of the Court’s March 11, 2013 Discovery Order, the request is DENIED in part, and  
GRANTED in part. To the extent the parties request that a protective order be entered

1 in this case regarding documents that have been requested through discovery and that  
2 MTUFN contends contain confidential information, the request is GRANTED.

### 3 **I. BACKGROUND**

4 On January 17, 2013, the parties filed a Joint Motion for Determination of  
5 Discovery Dispute, concerning several of Plaintiff's Requests for Production of  
6 Documents. (ECF No. 104.) On March 11, 2013, the Court entered an order regarding  
7 the discovery dispute ("Discovery Order"). (ECF No. 104.) The Court addressed  
8 MTUFN's objections to Plaintiff's discovery requests, including its objection that  
9 German law does not permit the discovery sought. (*Id.* at 10-17.) The Court concluded  
10 that Plaintiff was entitled to responses to its Requests for Production of Documents, but  
11 determined the scope of certain requests should be limited, and specifically outlined those  
12 limits in the Order. (*Id.* at 3-10.) The Court also determined that Federal Rules of Civil  
13 Procedure govern and apply to MTUFN. (*Id.* at 10-17.) The Court ordered MTUFN to  
14 provide supplemental responses to Plaintiff's discovery requests within thirty days. (*Id.*  
15 at 17.)

### 16 **II. DISCUSSION**

17 The Court recognized that some of Plaintiff's requests called for information that  
18 was potentially confidential or proprietary. (*Id.* at 4.) Therefore, the Court informed the  
19 parties they could file a joint motion for a protective order, if they deemed it necessary.  
20 (*Id.* at 4-5.) The Court anticipated the parties would meet and confer, and present the  
21 Court with a mutually agreeable stipulated protective order. Unfortunately that is not  
22 what has happened. Instead, it appears MTUFN viewed the Court's willingness to  
23 entertain a joint motion for protective order as an invitation to further brief the earlier  
24 discovery dispute. MTUFN now asks the Court to (1) further limit the scope of  
25 production; (2) relieve MTUFN of its obligation to produce documents that it deems  
26 would potentially violate confidentiality agreements it has with other companies and the  
27 German government; (3) relieve MTUFN of its obligation to produce proprietary or trade  
28 secret documents; and (4) extend time for MTUFN to provide its supplemental responses.

1 Plaintiff argues MTUFN's request is an improper application for reconsideration and is  
2 meant to further delay and resist discovery. Plaintiff requests monetary sanctions for its  
3 costs and contempt fines in the amount of \$10,000 per day.

4 Requests for reconsideration are disfavored and should be granted only in limited  
5 circumstances, such as when the Court "is presented with newly discovered evidence,  
6 committed clear error, or if there is an intervening change in the controlling law."  
7 *Marlyn Natraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir.  
8 2009). Motions for reconsideration are "not designed merely to provide a dissatisfied  
9 litigant with additional opportunity to sway the Court." *Teamsters Local 617 Pension*  
10 *and Welfare Funds v. Apollo Group, Inc.*, 282 F.R.D. 216, 232 (D. Ariz. March 30,  
11 2012). Here, MTUFN has not shown any new facts or circumstances, change in law, or  
12 clear error that would justify the Court to modify the March 11, 2013 Discovery Order,  
13 with the exception that the Court finds MTUFN should be granted a limited extension of  
14 time to provide its supplemental responses to Plaintiff.

15 First, the Court declines to further limit the scope of production. The Court has  
16 carefully considered the scope of Plaintiff's discovery requests, and has already imposed  
17 appropriate limits on the requests. (*See* ECF No. 104 at 5-7.) No further limitations will  
18 be imposed. MTUFN shall provide responsive documents as outlined in the Discovery  
19 Order.

20 Second, the Court declines to relieve MTUFN of its obligation to provide  
21 documents that MTUFN states *might* violate German law or confidentiality agreements  
22 it has with other companies and/or government agencies. The Court has already  
23 determined that the discovery provisions of the Federal Rules govern and apply to  
24 MTUFN. Further, the Court has reviewed the declarations from MTUFN's counsel and  
25 finds that they are too speculative in nature to warrant a modification of the Discovery  
26 Order. For example, MTUFN's counsel states compliance with the Discovery Order  
27 "would possibly violate German law . . ." and "potentially place MTUFN in substantial  
28 monetary jeopardy." (ECF No. 116-2 at ¶ 2 (emphasis added).). Counsel also states

1 “some of the requests *potentially* seek information that has national security  
2 implications.” (*Id.* (emphasis added).) But MTUFN provides no specifics, such as which  
3 requests it is referring to. Even assuming some of the requests seek information that is  
4 potentially confidential, that does not necessarily preclude production. *See* Fed.R.Civ.P.  
5 26(c)(1)(G) (allowing courts to issue protective orders that require confidential  
6 information “not be revealed *or be revealed only in a specified way*”) (emphasis added).  
7 As mentioned in the Discovery Order, MTUFN’s privacy concerns can be addressed  
8 through a protective order.

9 Third, the Court declines to relieve MTUFN from its obligation to produce  
10 documents that contain proprietary or trade secret information. As the Court previously  
11 found, Plaintiff’s document requests seek relevant information, and MTUFN must  
12 produce responsive documents, even if they contain confidential information. (ECF No.  
13 104 at 4-5.) Any sensitive information, including trade secrets, proprietary information,  
14 or other confidential commercial information can be adequately protected through the  
15 issuance of the Protective Order, which is fully set forth below. Therefore, MTUFN’s  
16 request to be permitted to not produce documents relating to the design, manufacturing,  
17 and/or construction of its products is denied.

18 Fourth, the Court appreciates that it is a significant undertaking for MTUFN to  
19 comply with the Discovery Order and produce the documents requested. However, the  
20 Court is troubled by the fact that MTUFN’s counsel has “only recently been informed of  
21 the estimate amount of time involved in responding to the current scope of requests.”  
22 (ECF No. 116-1 at ¶ 3.) The discovery at issue was initially propounded over six months  
23 ago. Moreover, MTUFN previously represented that it was in the process of assembling  
24 and reviewing documents in anticipation of complying with discovery. (*See* ECF No. 95  
25 at 18, n.3.) However, because it appears MTUFN needs additional time to comply with  
26 German privacy laws, the Court will extend MTUFN’s deadline to comply with the  
27 Discovery Order. MTUFN is ordered to provide supplemental responses no later than  
28 **May 31, 2013.**

1 Finally, the Court has considered Plaintiff's request for monetary sanctions and  
2 contempt fines, and declines to sanction MTUFN at this time.

### 3 III. PROTECTIVE ORDER

4 Good cause appearing, the Parties' request that a Protective Order be entered in the  
5 above-entitled matter to maintain the confidential nature of any information so designated  
6 by MTUFN is hereby **GRANTED**. The Court has reviewed the proposed protective  
7 order provided by the parties, and Plaintiff's objections thereto. (*See* ECF No. 117.) For  
8 the reasons set forth above, Plaintiff's objections are sustained. The Protective Order is  
9 hereby entered as follows:<sup>1</sup>

10 In order to facilitate the exchange of information and documents which may be  
11 subject to confidentiality limitations on disclosure due to U.S. federal laws, state laws,  
12 foreign laws and privacy rights, IT IS HEREBY ORDERED THAT:

13 1. In this Order, the words set forth below shall have the following meanings:

14 a. "Proceeding" means the above-entitled proceeding (Civil No.  
15 10cv1345-L (DHB)).

16 b. "Court" means the United States Magistrate Judge David H. Bartick,  
17 or any other judge to which this Proceeding may be assigned, including Court staff  
18 participating in such proceedings.

19 c. "Confidential" means any information in the possession of a  
20 Designating Party which is entitled to confidential treatment, including, but not limited  
21 to: (1) documents that contain personal information, including names, addresses, account  
22 numbers, social security numbers, dates of birth, or other identifying information or  
23 personal information (including personal financial information) protected from public  
24 disclosure by statute or regulation or otherwise under applicable law; (2) documents  
25 protected by law, including all documents and information that are confidential and  
26 privileged as provided by the laws of the State of California and any other federal or state  
27 laws; (3) confidential business information, including any proprietary document or  
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<sup>1</sup> The Parties' proposed Protective Order is adopted with certain modifications.

1 information relating to the business of a party, which constitutes, reflects, or discloses a  
2 trade secret, proprietary data, commercially sensitive information, or other information  
3 which is confidential under applicable law.

4 d. "Confidential Materials" means any Documents, Testimony or  
5 Information as defined below designated as "Confidential" pursuant to the provisions of  
6 this Protective Order.

7 e. "Designating Party" means the Party that designates Materials as  
8 "Confidential."

9 f. "Disclose" or "Disclosed" or "Disclosure" means to reveal, divulge,  
10 give, or make available Materials, or any part thereof, or any information contained  
11 therein.

12 g. "Documents" means (i) any "Writing," "Original," and "Duplicate"  
13 as those terms are defined by California Evidence Code Sections 250, 255, and 260,  
14 which have been produced in discovery in this Proceeding by any person, and (ii) any  
15 copies, reproductions, or summaries of all or any part of the foregoing.

16 h. "Information" means the content of Documents or Testimony.

17 i. "Testimony" means all depositions, declarations or other testimony  
18 taken or used in this Proceeding.

19 2. The Designating Party shall have the right to designate as "Confidential" any  
20 Documents, Testimony or Information that the Designating Party in good faith believes  
21 to contain information that is entitled to confidential treatment pursuant to the provisions  
22 of this Protective Order.

23 3. The entry of this Protective Order does not alter, waive, modify, or abridge  
24 any right, privilege or protection otherwise available to any Party with respect to the  
25 discovery of matters, including but not limited to any Party's right to assert the  
26 attorney-client privilege, the attorney work product doctrine, or other privileges, or any  
27 Party's right to contest any such assertion.

28 4. Any Documents, Testimony or Information to be designated as

1 “Confidential” must be clearly so designated before the Document, Testimony or  
2 Information is Disclosed or produced. The parties may agree that the case name and  
3 number are to be part of the “Confidential” designation. The “Confidential” designation  
4 should not obscure or interfere with the legibility of the designated Information.

5 a. For Documents (apart from transcripts of depositions or other pretrial  
6 or trial proceedings), the Designating Party must affix the legend “Confidential” on each  
7 page of any Document containing such designated Confidential Material.

8 b. For Testimony given in depositions the Designating Party may either:

9 I. identify on the record, before the close of the deposition, all  
10 “Confidential” Testimony, by specifying all portions of the  
11 Testimony that qualify as “Confidential;” or

12 ii. designate the entirety of the Testimony at the deposition as  
13 “Confidential” (before the deposition is concluded) with the right to  
14 identify more specific portions of the Testimony as to which  
15 protection is sought within 30 days following receipt of the  
16 deposition transcript. In circumstances where portions of the  
17 deposition Testimony are designated for protection, the transcript  
18 pages containing “Confidential” Information may be separately  
19 bound by the court reporter, who must affix to the top of each page  
20 the legend “Confidential,” as instructed by the Designating Party.

21 c. For Information produced in some form other than Documents, and  
22 for any other tangible items, including, without limitation, compact discs or DVDs, the  
23 Designating Party must affix in a prominent place on the exterior of the container or  
24 containers in which the Information or item is stored the legend “Confidential.” If only  
25 portions of the Information or item warrant protection, the Designating Party, to the  
26 extent practicable, shall identify the “Confidential” portions.

27 5. The inadvertent production by any of the undersigned Parties or non-Parties  
28 to the Proceedings of any Document, Testimony or Information during discovery in this



1 Proceeding without a “Confidential” designation, shall be without prejudice to any claim  
2 that such item is “Confidential” and such Party shall not be held to have waived any  
3 rights by such inadvertent production. In the event that any Document, Testimony or  
4 Information that is subject to a “Confidential” designation is inadvertently produced  
5 without such designation, the Party that inadvertently produced the document shall give  
6 written notice of such inadvertent production within twenty (20) days of discovery of the  
7 inadvertent production, together with a further copy of the subject Document, Testimony  
8 or Information designated as “Confidential” (the “Inadvertent Production Notice”). Upon  
9 receipt of such Inadvertent Production Notice, the Party that received the inadvertently  
10 produced Document, Testimony or Information shall promptly destroy the inadvertently  
11 produced Document, Testimony or Information and all copies thereof, or, at the expense  
12 of the producing Party, return such together with all copies of such Document, Testimony  
13 or Information to counsel for the producing Party and shall retain only the “Confidential”  
14 designated Materials. Should the receiving Party choose to destroy such inadvertently  
15 produced Document, Testimony or Information, the receiving Party shall notify the  
16 producing Party in writing of such destruction within ten (10) days of receipt of written  
17 notice of the inadvertent production. This provision is not intended to apply to any  
18 inadvertent production of any Information protected by attorney-client or work product  
19 privileges. In the event that this provision conflicts with any applicable law regarding  
20 waiver of confidentiality through the inadvertent production of Documents, Testimony  
21 or Information, such law shall govern.

22         6. In the event that counsel for a Party receiving Documents, Testimony or  
23 Information in discovery designated as “Confidential” objects to such designation with  
24 respect to any or all of such items, said counsel shall advise counsel for the Designating  
25 Party, in writing, of such objections, the specific Documents, Testimony or Information  
26 to which each objection pertains, and the specific reasons and support for such objections  
27 (the “Designation Objections”). Counsel for the Designating Party shall have thirty (30)  
28 days from receipt of the written Designation Objections to either (a) agree in writing to



1 de-designate Documents, Testimony or Information pursuant to any or all of the  
2 Designation Objections and/or (b) file a motion with the Court seeking to uphold any or  
3 all designations on Documents, Testimony or Information addressed by the Designation  
4 Objections (the “Designation Motion”). Pending a resolution of the Designation Motion  
5 by the Court, any and all existing designations on the Documents, Testimony or  
6 Information at issue in such Motion shall remain in place. The Designating Party shall  
7 have the burden on any Designation Motion of establishing the applicability of its  
8 “Confidential” designation. In the event that the Designation Objections are neither  
9 timely agreed to nor timely addressed in the Designation Motion, then such Documents,  
10 Testimony or Information shall be de-designated in accordance with the Designation  
11 Objection applicable to such material.

12 7. Access to and/or Disclosure of Confidential Materials designated as  
13 “Confidential” shall be permitted only to the following persons:

14 a. the Court;

15 b. (1) Attorneys of record in the Proceedings and their affiliated  
16 attorneys, paralegals, clerical and secretarial staff employed by such attorneys who are  
17 actively involved in the Proceedings and are not employees of any Party. (2) In-house  
18 counsel to the undersigned Parties and the paralegal, clerical and secretarial staff  
19 employed by such counsel. Provided, however, that each non-lawyer given access to  
20 Confidential Materials shall be advised that such Materials are being Disclosed pursuant  
21 to, and are subject to, the terms of this Protective Order and that they may not be  
22 Disclosed other than pursuant to its terms;

23 c. those officers, directors, partners, members, employees and agents of  
24 all nondesignating Parties that counsel for such Parties deems necessary to aid counsel  
25 in the prosecution and defense of this Proceeding; provided, however, that prior to the  
26 Disclosure of Confidential Materials to any such officer, director, partner, member,  
27 employee or agent, counsel for the Party making the Disclosure shall deliver a copy of  
28 this Protective Order to such person, shall explain that such person is bound to follow the

1 terms of such Order, and shall secure the signature of such person on a statement in the  
2 form attached hereto as Exhibit A;

3 d. court reporters in this Proceeding (whether at depositions, hearings,  
4 or any other proceeding);

5 e. any deposition, trial or hearing witness in the Proceeding who  
6 previously has had access to the Confidential Materials, or who is currently or was  
7 previously an officer, director, partner, member, employee or agent of an entity that has  
8 had access to the Confidential Materials;

9 f. any deposition or non-trial hearing witness in the Proceeding who  
10 previously did not have access to the Confidential Materials; provided, however, that  
11 each such witness given access to Confidential Materials shall be advised that such  
12 Materials are being Disclosed pursuant to, and are subject to, the terms of this Protective  
13 Order and that they may not be Disclosed other than pursuant to its terms;

14 g. mock jury participants, provided, however, that prior to the Disclosure  
15 of Confidential Materials to any such mock jury participant, counsel for the Party making  
16 the Disclosure shall deliver a copy of this Protective Order to such person, shall explain  
17 that such person is bound to follow the terms of such Order, and shall secure the signature  
18 of such person on a statement in the form attached hereto as Exhibit A.

19 h. outside experts or expert consultants consulted by the undersigned  
20 Parties or their counsel in connection with the Proceeding, whether or not retained to  
21 testify at any oral hearing; provided, however, that prior to the Disclosure of Confidential  
22 Materials to any such expert or expert consultant, counsel for the Party making the  
23 Disclosure shall deliver a copy of this Protective Order to such person, shall explain its  
24 terms to such person, and shall secure the signature of such person on a statement in the  
25 form attached hereto as Exhibit A. It shall be the obligation of counsel, upon learning of  
26 any breach or threatened breach of this Protective Order by any such expert or expert  
27 consultant, to promptly notify counsel for the Designating Party of such breach or  
28 threatened breach; and

1 i. any other person that the Designating Party agrees to in writing.

2 8. Confidential Materials shall be used by the persons receiving them only for  
3 the purposes of preparing for, conducting, participating in the conduct of, and/or  
4 prosecuting and/or defending the Proceeding, and not for any business or other purpose  
5 whatsoever.

6 9. Any Party to the Proceeding (or other person subject to the terms of this  
7 Protective Order) may ask the Court, after appropriate notice to the other Parties to the  
8 Proceeding, to modify or grant relief from any provision of this Protective Order.

9 10. Entering into, agreeing to, and/or complying with the terms of this Protective  
10 Order shall not:

11 a. operate as an admission by any person that any particular Document,  
12 Testimony or Information marked "Confidential" contains or reflects trade secrets,  
13 proprietary, confidential or competitively sensitive business, commercial, financial or  
14 personal information; or

15 b. prejudice in any way the right of any Party (or any other person  
16 subject to the terms of this Protective Order):

17 I. to seek a determination by the Court of whether any particular  
18 Confidential Material should be subject to protection as  
19 "Confidential" under the terms of this Protective Order; or

20 ii. to seek relief from the Court on appropriate notice to all other  
21 Parties to the Proceeding from any provision(s) of this Protective  
22 Order, either generally or as to any particular Document, Material or  
23 Information.

24 11. Any Information that may be produced by a non-Party witness in discovery  
25 in the Proceeding pursuant to subpoena or otherwise may be designated by such  
26 non-Party as "Confidential" under the terms of this Protective Order, and any such  
27 designation by a non-Party shall have the same force and effect, and create the same  
28 duties and obligations, as if made by one of the undersigned Parties hereto. Any such

1 designation shall also function as a consent by such producing Party to the authority of  
2 the Court in the Proceeding to resolve and conclusively determine any motion or other  
3 application made by any person or Party with respect to such designation, or any other  
4 matter otherwise arising under this Protective Order.

5       12. If any person subject to this Protective Order who has custody of any  
6 Confidential Materials receives a subpoena or other process ("Subpoena") from any  
7 government or other person or entity demanding production of Confidential Materials,  
8 the recipient of the Subpoena shall promptly give notice of the same by electronic mail  
9 transmission, followed by either express mail or overnight delivery to counsel of record  
10 for the Designating Party, and shall furnish such counsel with a copy of the Subpoena.  
11 Upon receipt of this notice, the Designating Party may, in its sole discretion and at its  
12 own cost, move to quash or limit the Subpoena, otherwise oppose production of the  
13 Confidential Materials, and/or seek to obtain confidential treatment of such Confidential  
14 Materials from the subpoenaing person or entity to the fullest extent available under law.  
15 The recipient of the Subpoena may not produce any Documents, Testimony or  
16 Information pursuant to the Subpoena prior to the date specified for production on the  
17 Subpoena.

18       13. If, after the entry of this Protective Order, any Confidential Materials  
19 submitted by a Designating Party under the terms of this Protective Order is Disclosed  
20 by a non-Designating Party to any person other than in the manner authorized by this  
21 Protective Order, the non-Designating Party responsible for the Disclosure shall bring all  
22 pertinent facts relating to the Disclosure of such Confidential Materials to the immediate  
23 attention of the Designating Party.

24       14. This Protective Order is entered without prejudice to the right of any Party  
25 to knowingly waive the applicability of this Protective Order to any Confidential  
26 Materials designated by that Party. If the Designating Party uses Confidential Materials  
27 in a non-Confidential manner, then the Designating Party shall advise that the designation  
28 no longer applies.

1           15. No document shall be filed under seal unless counsel secures a court order  
2 allowing the filing of a document under seal. An application to file a document under seal  
3 shall be served on opposing counsel, and on the person or entity that has custody and  
4 control of the document, if different from opposing counsel. If opposing counsel, or the  
5 person or entity who has custody and control of the document, wishes to oppose the  
6 application, he/she must contact the chambers of the judge who will rule on the  
7 application, to notify the judge's staff that an opposition to the application will be filed.

8           16. The Parties shall meet and confer regarding the procedures for use of  
9 Confidential Materials at trial and shall move the Court for entry of an appropriate order.

10           17. Nothing in this Protective Order shall affect the admissibility into evidence  
11 of Confidential Materials, or abridge the rights of any person to seek judicial review or  
12 to pursue other appropriate judicial action with respect to any ruling made by the Court  
13 concerning the issue of the status of Confidential Material.

14           18. This Protective Order shall continue to be binding after the conclusion of  
15 this Proceeding and all subsequent proceedings arising from this Proceeding, except that  
16 a Party may seek the written permission of the Designating Party or may move the Court  
17 for relief from the provisions of this Protective Order.

18           19. Upon written request made within thirty (30) days after the settlement or  
19 other termination of the Proceeding, the undersigned Parties shall have thirty (30) days  
20 to either (a) promptly return to counsel for each Designating Party all Confidential  
21 Materials and all copies thereof (except that counsel for each Party may maintain in its  
22 files, in continuing compliance with the terms of this Protective Order, all work product,  
23 and one copy of each pleading filed with the Court [and one copy of each deposition  
24 together with the exhibits marked at the deposition)], (b) agree with counsel for the  
25 Designating Party upon appropriate methods and certification of destruction or other  
26 disposition of such Confidential Materials, or (c) as to any Documents, Testimony or  
27 other Information not addressed by sub-paragraphs (a) and (b), file a motion seeking a  
28 Court order regarding proper preservation of such Materials. To the extent permitted by

1 law the Court shall retain continuing jurisdiction to review and rule upon the motion  
2 referred to in sub-paragraph (c) herein.

3 20. The Court may modify the terms and conditions of the Order for good cause,  
4 or in the interest of justice, or on its own order at any time in these proceedings.

5 **III. CONCLUSION**

6 For the foregoing reasons, the Court HEREBY ORDERS Defendant MTUFN to  
7 provide supplemental responses to Plaintiff's Requests for Production, in accordance with  
8 the terms of the Court's March 11, 2013 Discovery Order no later than **May 31, 2013**.  
9 It is FURTHER ORDERED that the parties' request for a protective order is GRANTED,  
10 as set forth above.

11 **IT IS SO ORDERED.**

12 DATED: April 16, 2013

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14 DAVID H. BARTICK  
15 United States Magistrate Judge  
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28 **EXHIBIT A**

**CERTIFICATION RE CONFIDENTIAL DISCOVERY MATERIALS**

I hereby acknowledge that I, \_\_\_\_\_NAME],  
 \_\_\_\_\_ [POSITION AND  
 EMPLOYER], am about to receive Confidential Materials supplied in connection with  
 the Proceeding, (Case No. 3:10cv1345-L(DHB)). I certify that I understand that the  
 Confidential Materials are provided to me subject to the terms and restrictions of the  
 Protective Order filed in this Proceeding. I have been given a copy of the Protective  
 Order; I have read it, and I agree to be bound by its terms.

I understand that Confidential Materials, as defined in the Protective  
 Order, including any notes or other records that may be made regarding any such  
 materials, shall not be Disclosed to anyone except as expressly permitted by the  
 Protective Order. I will not copy or use, except solely for the purposes of this  
 Proceeding, any Confidential Materials obtained pursuant to this Protective Order,  
 except as provided therein or otherwise ordered by the Court in the Proceeding.

I further understand that I am to retain all copies of all Confidential  
 Materials provided to me in the Proceeding in a secure manner, and that all copies of  
 such Materials are to remain in my personal custody until termination of my  
 participation in this Proceeding, whereupon the copies of such Materials will be  
 returned to counsel who provided me with such Materials.

I declare under penalty of perjury, under the laws of the State of California,  
 that the foregoing is true and correct. Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, at  
 \_\_\_\_\_.

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Phone: \_\_\_\_\_